

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**NATIONAL KIDNEY FOUNDATION OF INDIANA, INC.
D/B/A NATIONAL KIDNEY FOUNDATION OF INDIANA, INC.,
NORTHWEST CHAPTER
DOCKET NO. 29-2002-0544**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

This matter is before the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204. Bruce R. Kolb, Administrative Law Judge, is acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

In lieu of an administrative hearing the Petitioner's counsel requested in a letter dated April 25, 2003 that a decision be rendered based upon the information contained in the Department's files and also contained in a letter of protest dated October 31, 2002. Pursuant to IC 4-21.5 et seq. Petitioner's correspondence shall be treated as a motion for summary judgment (IC 4-21.5-3-23). On May 29, 2003 the Department was given ten (10) days in which to make known its intention to file documents in opposition to the motion. An additional twenty (20) days was granted for any additional filings. The Department responded on June 12, 2003 and stated that it would file its response within 20 days. The Department failed to file any response within the allotted time.

Petitioner, National Kidney Foundation of Indiana, Inc., was represented by Timothy J. Bender of Bingham McHale, 2700 West Tower, 10 West Market Street, Indianapolis, Indiana 46204-4900. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On April 2, 2003 the Petitioner was notified of additional charity gaming license fees due and owing for the periods ending June 30, 1997 and June 30, 1998. The Petitioner protested in a timely manner.

FINDINGS OF FACT

- 1) The Petitioner's audit conducted by the Indiana Department of Revenue was completed on November 5, 2001.

- 2) The audit covered income, sales and use tax. No changes were made to the sales and use tax audit.
- 3) Charity gaming license fee liabilities for 1997 were created on March 21, 2002 and were subsequently cancelled on March 25, 2002. The Petitioner was then billed again on September 11, 2002.
- 4) Charity gaming license fee liabilities for 1998 were created on September 6, 2002 and were billed on September 11, 2002.
- 5) Petitioner's letter to Ms. Catherine McGuckin, CPA, Field Auditor for the Indiana Department of Revenue, dated September 14, 2001, states:

I received a copy of your September 11, 2001, letter to Mary Kay Hensley. We are very pleased, and appreciate, that the Department of Revenue has decided not to pursue unrelated business income tax and sales/use tax assessments against National Kidney Foundation of Indiana, Inc. d/b/a National Kidney Foundation of Indiana, Northwest Chapter (the 'Corporation').

Your September 11, 2001, letter, also proposes additional license fees based on asserted underreported gross receipts, for the 1996-1997, 1997-1998, and 1998-1999 fiscal years. In addition, your September 11, 2001, letter leaves open the possibility of further penalties.

Because the additional asserted license fees are based upon gross receipts, and because the Corporation timely filed its financial reporting forms, I believe that the statute of limitations should bar any additional license fees from being assessed from the 1996-1997 and the 1997-1998 fiscal years....

- 6) The Indiana Department of Revenue issued a proposed assessment (AR-80) on September 10, 2002. The Department's billing stated, "A review of your Indiana Bingo tax return(s) for the period ending...has determined that you may owe..."
- 7) The explanation on the reverse side of the billing states:

IC 4-32-11-3 PROVIDES 'LICENSE FEE CHARGED TO A QUALIFIED ORGANIZATION THAT RENEWS THE LICENSE MUST BE BASED ON THE TOTAL GROSS REVENUE OF THE QUALIFIED ORGANIZATION FROM ALLOWABLE EVENTS AND RELATED ACTIVITIES'. AN AUDIT OF YOUR ORGANIZATION RECORDS INDICATES THAT YOU OWE ADDITIONAL LICENSE FEES.

- 8) The Department issued the proposed assessments for additional charity gaming license fees and termed the additional money owed as "Original Tax.(Bingo)."
- 9) The Department cancelled the assessment of the non-existent Bingo Tax on April 2, 2003.
- 10) The Indiana Department of Revenue Compliance Division notified Petitioner in a letter dated April 2, 2003 of additional charity gaming license fees due and owing for the periods ending June 30, 1997 and June 30, 1998.
- 11) Petitioner possessed Indiana charity gaming licenses for the periods June 1, 1996; June 1, 1997; and June 1, 1998.

- 12) Petitioner's accounting periods are May 1, 1996 to April 30, 1997; May 1, 1997 to April 30, 1998; and May 1, 1998 to April 30, 1999.
- 13) Petitioner's letter dated October 31, 2002, states that they timely filed CG-8s for the periods ending May 1, 1996 to April 30, 1997; May 1, 1997 to April 30, 1998; and May 1, 1998 to April 30, 1999.
- 14) In lieu of an administrative hearing the Petitioner's counsel requested in a letter dated April 25, 2003 that a decision be rendered based upon the information contained in the Department's files and also contained in a letter of protest dated October 31, 2002.
- 15) Pursuant to IC 4-21.5 et seq. Petitioner's correspondence shall be treated as a motion for summary judgment (IC 4-21.5-3-23).
- 16) On May 29, 2003 the Department was given ten (10) days in which to make known its intention to file documents in opposition to the motion.
- 17) An additional twenty (20) days was granted for any additional filings.
- 18) The Department responded on June 12, 2003 and stated that it would file its response within 20 days. The Department failed to file any response within the allotted time.

STATEMENT OF LAW

- 1) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
- 2) IC 4-21.5-3-23 states, "(a) A party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding. The motion must be supported with affidavits or other evidence permitted under this section and set forth specific facts showing that there is not a genuine issue in dispute..."
- 3) Form CG-8 (Indiana Annual Bingo and/or Pull Tab License Financial Report). This report must be filed with the Indiana Department of Revenue by the 10th day of the month in which the organization's charity gaming license expires. The report is required to show all financial and accounting activity related to the organization's annual gaming license.
- 4) The CG-8 states, "The accounting period is a 12-month period; the year-end will always occur one month prior to the end of the gaming period. For example, if your license expires 5/31/98. then your accounting period will be from 5/1/97 to 4/30/98. **This financial statement will reflect your organization's accounting period and not the licensing period.**"
- 5) IC 4-32-11-3 provides, "The license fee that is charged to a qualified organization that renews the license must be based on the total gross revenue of the qualified organization from allowable events and related activities in the preceding year..."

CONCLUSIONS OF LAW

- 1) Petitioner timely filed its CG-8s for the periods ending May 1, 1996 to April 30, 1997; May 1, 1997 to April 30, 1998; and May 1, 1998 to April 30, 1999.
- 2) The Department's form CG-8 states, "The accounting period is a 12-month period; the year-end will always occur one month prior to the end of the gaming period. For example, if your license expires 5/31/98. then your accounting period will be from 5/1/97 to 4/30/98. This financial statement will reflect your organization's accounting period and not the licensing period."
- 3) The Petitioner has provided sufficient documentation in support of its motion for summary judgment.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

Petitioner's motion for summary judgment is affirmed.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

Bruce R. Kolb / Administrative Law Judge